

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of:

WILLIAM EDWARD HIMMELMANN,

Respondent.

Case Number D1-2007-25

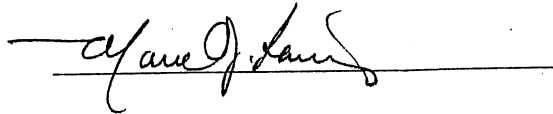
OAH Number 2009070181

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Board of Accountancy as its Decision in the above-entitled matter.

This Decision shall become effective on February 28, 2010.

IT IS SO ORDERED this 29th day of January, 2010.



BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
to Revoke Probation Against:

WILLIAM EDWARD HIMMELMANN,
Sacramento, California 95817

Certified Public Accountant
Certificate No. 49096

Respondent.

Case No. D1-2007-25

OAH No. 2009070181

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 19, 2009, in Sacramento, California.

Jeffrey M. Phillips, Deputy Attorney General, represented complainant Patti Bowers, Executive Officer of the California Board of Accountancy (board), Department of Consumer Affairs (department).

William Edward Himmelmann (respondent) appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted on November 19, 2009.

FACTUAL FINDINGS

1. On October 9, 1987, the board issued certified public accountant (CPA) certificate number 49096 to respondent. On April 28, 2008, respondent's certificate was suspended for 120 days and placed on probation for three years. Respondent's license was inactive between June 30, 2007 and June 30, 2009, due to respondent's failure to comply with mandatory continuing education requirements. Respondent's license expired on June 30, 2009, and no evidence was presented to establish that the license has been renewed.

2. On May 23, 1995, the board issued fictitious name permit number 681 for W.E. Himmelmann & Co., to permit respondent to practice under a name other than the name set forth on his CPA certificate.

3. On July 3, 2009, complainant filed the Accusation in her official capacity. Complainant seeks to revoke respondent's certificate based on a criminal conviction; prior disciplinary action; failure to report reportable events; practicing without a license; failure to return client records; failure to respond to the board's inquiries; and willful violation of the board's rules and regulations. Complainant also seeks to revoke respondent's probation based on practicing on a suspended license; failure to obey all laws; failure to submit written reports; failure to take and pass an ethics course; failure to maintain an active license status; failure to pay costs; failure to provide proof of mental and physical fitness to practice; and failure to cooperate fully with the board during probation.

4. Respondent timely filed a notice of defense to the Accusation and Petition to Revoke Probation pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Conviction – May 7, 2007

5. On May 7, 2007, in the United States District Court, Eastern District of California, in the matter entitled *United States of America v. William E. Himmelmann* (Case No. 2:07CR00046-GGH), respondent, upon a plea of guilty, was convicted of violating Title 31, United States Code, Section 333, misuse of treasury names and symbols, a misdemeanor. Respondent was sentenced to one year supervised probation, and ordered to pay a \$2,000 fine and a \$25 special assessment.

6. Respondent's conviction arose from his conduct on November 19, 2004 when he prepared a letter for a not-for-profit client that contained the symbol of the U.S. Treasury Department. Respondent's conduct was performed during the course and scope of his employment as a certified public accountant, and is therefore substantially related to the functions, duties and responsibilities of a licensee. Respondent failed to report his conviction to the board. In July 2008, during an independent search of the Internal Revenue Service (IRS) website, the board discovered the conviction and resulting disciplinary sanctions imposed by the IRS, as set forth in Factual Findings 7 and 8.

Internal Revenue Service Disciplinary Sanctions – March 4, 2008

7. Effective March 4, 2008, before the IRS, Office of Professional Responsibility (OPR), respondent was suspended indefinitely "by decision in expedited proceeding under section 10.82 (conviction under 31 U.S.C. section 333, misuse of treasury names and symbols)."

8. At hearing, Douglas H. Reid, Investigative CPA for the board, testified that he first became aware of respondent's suspension in July 2008, when a colleague provided him with a copy of a June 2, 2008 IRS report listing respondent's suspension. Respondent failed to report his disciplinary sanctions to the board.

Prior Disciplinary Action – March 28, 2008

9. On March 28, 2008, in Case No. AC-2007-25, the board entered into a Stipulated Settlement and Disciplinary Order with respondent wherein respondent admitted the allegations in the board's Accusation, and agreed to a stayed revocation of his certificate; 120 days suspension; and three years probation. The terms and conditions of probation required respondent to (1) obey all laws; (2) submit written quarterly reports to the board; (3) appear in person at interviews and meetings with the board; (4) cooperate fully with the board in its monitoring and investigation of respondent's compliance with the terms of probation; (5) permit investigation of respondent's professional practice; (6) comply with all final orders of the board; (7) take and pass an ethics course/examination with a score of 90 percent or better; (8) maintain an active license status; (9) reimburse the board \$8,165.86 for its investigation and prosecution costs; (10) relinquish his certificate during the period of suspension; and (11) undergo and continue treatment by a licensed physician. The Stipulated Settlement and Disciplinary Order became effective on April 28, 2008. Respondent's certificate was suspended from April 28, 2008 through and including August 25, 2008.

Practicing Without a License – June 23, 2008

10. On June 23, 2008, respondent deposited two Form 1040 U.S. Individual Tax Returns 2007 (income tax returns) with the United States Postal Service, for delivery to clients C.L. and L.C.¹ Both forms were prepared by W.E. "Biff" Himmelmann of W.E. Himmelmann & Co. C.L. signed the income tax return on June 24, 2008. L.C.'s income tax return was unsigned.

Practice Investigation – June 27, 2008

11. On June 27, 2008, Mr. Reid conducted a practice investigation to review the terms of respondent's probation and to review his practice activities, and found the following:

- (a) Office signage did not display the titles "CPA" or "Certified Public Accountant."
- (b) Registered firm name, W.E. Himmelmann & Co., was displayed outside office door.
- (c) No business cards were visible at the front counter or on his desk.

¹ To protect the confidentiality of respondent's clients, initials will be used in lieu of actual names.

(d) Wall certificate and pocket ID were already turned in.

12. During the practice investigation, respondent made the following representations:

(a) He acknowledged that he was on suspension;

(b) He stated that he had not issued completed income tax returns since April 28, 2008;

(c) Some of his clients were on extension until October 15, 2008;

(d) He had not issued a financial statement report for approximately two years;

(e) He acknowledged that his first quarterly probation report and cost reimbursement payment were due on or before July 10, 2008;

(f) He had not applied for registration as a tax preparer with the California Tax Education Council (CTEC);

(g) He acknowledged that he was not an attorney or an enrolled agent (EA);

(h) He acknowledged that his CPA license was not active;

(i) He acknowledged that he had not completed the required ethics course and was in violation of one of the terms of his probation;

(j) He understood that completion of the ethics course was required for his 2007 renewal, and that he would complete the ethics course on Saturday, June 28, 2008;

(k) He understood that a physician's letter would be required on a periodic basis, and stated that he would be going in for blood work "soon."

13. Respondent was also required to make active and inactive files available for Mr. Reid's review. Mr. Reid randomly selected files and found them to be compliant with the terms and conditions of respondent's probation. However, when asked to produce the files for clients C.L. and L.C., respondent would not confirm that he had completed the income tax returns, would not state whether he had the files, and made no attempt to retrieve them for Mr. Reid's review.

Client Request for Documentation – August 4, 2008

14. On August 4, 2008, respondent's client, J.S., sent a facsimile notifying respondent that he intended to complete his own 2007 income tax returns, and requested the return of all the original tax documents submitted in support of his 2007 income tax return.

Investigative Hearing – August 7, 2008

15. On August 7, 2008, Mr. Reid conducted an investigative hearing with respondent to obtain the name of respondent's physician; the approximate date of the physician's first report regarding respondent's health and fitness to practice accountancy; a copy of the letter prepared by respondent using the U.S. Treasury symbol; a copy of the certificate of completion for the professional conduct and ethics course; a list of clients and copies of completed income tax returns issued during the period of his suspension; copies of correspondence with the U.S. Attorney's Office regarding his May 2007 criminal conviction; copies of correspondence with the U.S. Treasurer's Office regarding his March 2008 suspension from practice; and a copy of the cover letter to client J.S. regarding the documentation supporting his 2007 income tax returns. Respondent was granted 30 days within which to submit the information and documentation to the board.

16. At hearing, Mr. Reid testified that the board has not received respondent's first quarterly report; certificate of completion of ethics examination with a score of 90 percent or better, and physician's report. Mr. Reid asserted that had respondent submitted a certificate of completion of the ethics course, it would have enabled the board to reactive his certificate to active status. In addition, respondent has not reimbursed the department for the investigation and prosecution costs incurred in Case No. AC-2007-25.

17. During the investigative hearing, respondent admitted that he had passed the professional conduct and ethics exam with a score of less than 90 percent.

Violations of Probation

18. Respondent's certificate was suspended from April 28, 2008 through and including August 25, 2008. Respondent violated the terms of his suspension and Condition 1 of his probation when he deposited two income tax returns with the U.S. Postal Service on June 23, 2008 for delivery to clients C.L. and L.C.

19. Respondent violated Condition 2 of his probation when he failed to submit quarterly reports to the board in June 2008, September 2008, December 2008, March 2009, June 2009 and September 2009.

20. Respondent violated Condition 4 of his probation when he failed to cooperate fully with the board by refusing to submit information and documentation within 30 days of the investigative hearing.

21. Respondent violated Condition 7 of his probation when he failed to take and pass an ethics course/examination with a score of 90 percent or better.

22. Respondent violated Condition 8 of his probation when he failed to maintain an active license status with the board by refusing to submit evidence of completion of an ethics course.

23. Respondent violated Condition 9 of his probation when he failed to reimburse the board's investigation and prosecution costs associated with Case No. AC-2007-25.

24. Respondent violated Condition 11 of his probation when he failed to undergo and continue treatments with a licensed physician for the purpose of assessing his mental and physical fitness to practice accountancy in this state.

Costs of Investigation and Prosecution

25. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$15,916.11. This amount consists of the following:

a. Complainant submitted a Certification of Costs of Investigation and Prosecution, which requests \$12,881.61 for the costs and fees incurred by the board. Business and Professions Code section 125.3, subdivision (c), permits a board seeking costs to submit a "certified copy of the actual costs." California Code of Regulations, title 1, section 1042, subdivision (b), provides that cost certification must "contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." In addition, cost certifications must include or attach sufficient information to "describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service." (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).) During the hearing, complainant did not submit a breakdown of the time spent by staff on this matter and did not provide evidentiary support for the costs and fees. Consequently, complainant's "actual costs" for investigation, as required under Business and Professions Code section 125.3, subdivision (c), and California Code of Regulations, title 1, section 1042, are not reasonable and will not be awarded.

b. Complainant submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, which requests costs in the amount of \$2,694.50. Attached to the Deputy Attorney General's Declaration is a printout of a Matter Time Activity by Professional Type (Matter Time), which describes tasks performed by the Office of the Attorney General in the amount of \$2,694.50. In addition, the Deputy Attorney General estimated that he would spend an additional two hours preparing for the hearing that is not reflected on the Matter Time, for an additional \$340. The total amount of \$3,034.50 requested by the Office of the

Attorney General is reasonable in light of the description of the work performed and the nature of this case.

26. At hearing, respondent testified that his only source of support is his bookkeeping services. He is attempting to maintain his bookkeeping services, but knows that if he is evicted from his building, he will have to live on the streets. He has "drained down assets," and has no other means of support available, including from his son, daughter and sister.

Factors in Mitigation, Aggravation and Rehabilitation

27. At hearing, respondent testified that physical and mental incapacities have caused him problems, and he is financially incapable of meeting the terms and conditions of his probation.

Respondent admitted that he sent the income tax returns to C.L. and L.C. during the period of his suspension, but believes he did not violate the board's rules because the forms were already in his computer prior to the suspension period, and "it was [his] intent to the best thing [he] could for [his] previous client by returning the information." Respondent also believes that he did not violate the board's rules by not providing the original tax documents to J.S. because he "never worked with him and only worked with his mother." Respondent asserted that he could not recall receiving any data from J.S. He reviewed everything in his office, and asked J.S.' mother if she had the data. However, to this date respondent has been unable to locate any data for J.S. which "leads [him] to the conclusion that [he] never had it." Respondent also stated that he did not fail to report his May 2007 misdemeanor conviction to the board because he believed that the reportable activity was a felony conviction, which he "made ... clear to Mr. Reid when he brought it up." Respondent admitted that he did not submit quarterly reports to the board because he "had a breakdown after the meeting and forgot about it," and does not recall being reminded by the board, on several occasions, of this requirement. He has not taken the professional conduct and ethics examination because "it was not offered," and did not ask the board for information on where to take the examination.

Respondent asserted that "I have always been cooperative" with the board, and admitted that it wasn't until he experienced emotional and physical problems that he started to make "big mistakes." He has been divorced for one and one-half years, has lost his home, and has no assets or income. While he owns his office building, it is in foreclosure proceedings. Respondent currently resides in his office, and performs bookkeeping services. Michael Van de Brake is licensed by CTEC, and has been in respondent's employ for two years. Respondent admitted that he is not currently fit to practice accountancy, but stated that he is "working diligently at trying to get [his] life back together" and would like to retain his license on inactive status.

28. Respondent submitted a CalCPA Education Foundation (CalCPA) report which was received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).² On June 12, 2009, CalCPA offered an Ethics, Taxes and Financial Reporting course at Harvey's Lake Tahoe Resort for eight CPE credits in the field of Regulatory Ethics. Although the report was signed by CalCPA Executive Director, Kathleen W. Phelan, there was no indication that it was issued to respondent. At hearing, respondent testified that the report was not issued until he completed the course, and he opted not to print his name and address on the report. He indicated that he had no excuse as to why he did not provide a copy of the report to the board.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 5051 provides that a person shall be deemed to be engaged in the practice of public accountancy if he or she does any of the following:

[¶] ... [¶]

(c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.

[¶] ... [¶]

(g) Prepares or signs, as the tax preparer, tax returns for clients.

[¶] ... [¶]

2. Business and Professions Code section 5109 provides that "[t]he expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license."

² Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"

3. California Code of Regulations, title 16, section 52, subdivision (a), provides that "[a] licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested."

4. California Code of Regulations, title 16, section 68, provides that "[a] licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records."

Cause for Discipline

5. Business and Professions Code section 5037, subdivision (b), provides that upon request and reasonable notice, a licensee shall furnish to his or her client or former client:

(1) A copy of the licensee's working papers, to the extent that those working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of documents of the client when they form the basis for work done by him or her.

As set forth in Factual Findings 14, 15 and 27, respondent did not return the working papers to a former client as requested. Therefore, cause exists to revoke respondent's certificate pursuant to Business and Professions Code section 5037, subdivision (b), in conjunction with California Code of Regulations, title 16, section 68.

6. Business and Professions Code section 5050, subdivision (a), provides, in pertinent part, that "no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096)."

As set forth in Factual Findings 10, 12, 13, 15, 18 and 27, respondent was suspended from the practice of public accountancy from April 28, 2008 through and including August 25, 2008. On June 23, 2008, respondent engaged in the practice of public accountancy in this state when he deposited two income tax returns in the U.S. Postal Service for clients C.L. and L.C. Therefore, cause exists to revoke respondent's certificate pursuant to Business and Professions Code sections 5050, subdivision (a), and 5051, subdivision (g).

7. Business and Professions Code section 5063, subdivision (a), provides that a licensee shall report to the board in writing, within 30 days, of the occurrence of any of the following events:

(1) The conviction of the licensee of any of the following:

[9] ... [9]

(B) Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy.

[9] ... [9]

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

[9] ... [9]

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

As set forth in Factual Findings 5, 6, 7, 8, 15, 20 and 27, respondent failed to report to the board his May 7, 2007 criminal conviction and March 4, 2008 suspension by the Internal Revenue Service, Office of Professional Responsibility. Therefore, cause exists to revoke respondent's certificate pursuant to Business and Professions Code section 5063, subdivision (a).

8. Business and Professions Code section 5100 provides, in pertinent part, that the board may revoke, suspend or refuse to renew any permit or certificate, or may censure the holder of the permit or certificate, for unprofessional conduct, including:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

[9] ... [9]

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

[¶] ... [¶]

As set forth in Factual Findings 5 and 6, respondent was convicted of a misdemeanor on May 7, 2007. As set forth in Factual Findings 10, 12 through 24 and 27, respondent violated the board's rules and regulations by depositing income tax returns with the U.S. Postal Services for clients C.L. and L.C.; refusing to retrieve files for the board's review; failing to return original tax documents to client J.S.; and failing to provide information and documentation to the board within 30 days of the investigative hearing. As set forth in Factual Findings 7 and 8, respondent was suspended indefinitely before the Internal Revenue Service, Office of Professional Responsibility on March 4, 2008. Therefore, cause exists to revoke respondent's certificate pursuant to Business and Professions Code section 5100, subdivisions (a), (g), and (h).

Grounds for Revocation of Probation

9. As set forth in Factual Findings 9, 10, 12, 13, 15 through 24 and 27, respondent violated the terms and conditions of his probation in Case No. AC-2007-25. Therefore, cause exists to revoke respondent's probation pursuant to the Stipulated Settlement and Disciplinary Order adopted by the board on March 28, 2008 and effective April 28, 2008.

Recoverable Costs

10. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Findings 25 and 26, complainant submitted sufficient proof to establish that \$3,034.50 of the requested costs were reasonable. Respondent was not successful in getting any charges dismissed or reduced. He did not raise a colorable challenge to the proposed discipline. He did, however, assert that he is unable to pay any of the requested costs. Because respondent is currently unable to pay any costs, complainant's request for costs in the amount of \$3,034.50 will be granted, but respondent will not be required to pay such costs unless and until his license is reinstated.

Fitness for Continued Certification


11. Respondent is to be commended for making every effort to get his life back together. However, as respondent admitted at hearing, he is not fit to practice accountancy at the present time. He did not accept full responsibility or express remorse for his conduct. In addition, respondent failed to disclose his federal criminal conviction and Internal Revenue Service suspension to the board, which casts doubt upon the extent to which he can be relied upon to provide complete and correct information to the public and the department in the future. Although respondent has requested to retain his license on inactive status, more time is needed to provide adequate assurances that respondent is fit to practice accountancy. When all the facts and circumstances are considered, it would not be in the public interest to allow respondent to maintain his CPA certificate at this time.

ORDER

1. Certified Public Accountant Certificate No. 49096, issued to respondent William Edward Himmelmann, is REVOKED.

2. Respondent is ordered to pay the California Board of Accountancy \$3,034.50 as its reasonable costs of prosecution in this matter. This amount shall not be due and owing unless and until respondent's Certified Public Accountant Certificate is reinstated.

Dated: December 14, 2009


REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN, JR., Attorney General
of the State of California
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8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

12 WILLIAM E. HIMMELMANN
13 2450 Alhambra Boulevard
Sacramento, CA 95817

14 Certified Public Accountant
15 Certificate No. 49096

Respondent.

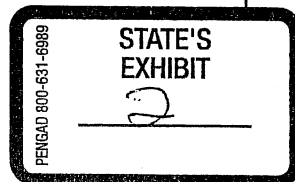
Case No. D1-2007-25

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Patti Bowers ("Complainant") brings this Accusation and Petition to
20 Revoke Probation ("Petition") solely in her official capacity as the Executive Officer of the
21 California Board of Accountancy, Department of Consumer Affairs ("Board").
- 22 2. On or about October 9, 1987, the California Board of Accountancy issued
23 Certified Public Accountant ("CPA") Certificate Number 49096 ("license") to William E.
24 Himmelmann ("Respondent"). The Certified Public Accountant Certificate was in full force and
25 effect, except as stated below. The certificate expired and was not valid from July 1, 1989 to
26 October 3, 1989; from July 1, 1993 to July 23, 1993; from July 1, 1997 to July 25, 1997; from
27 July 1, 2005 to June 29, 2007. Effective June 30, 2007, the certificate was renewed through
28 June 30, 2009, however full compliance with the mandatory continuing education requirements



1 has not been met and, thus, the certificate remains inactive.

2 **PRIOR DISCIPLINE**

3 3. Effective April 28, 2008, pursuant to the Stipulated Settlement and
4 Disciplinary Order in Accusation No. AC-2007-25, the Board revoked Respondent's CPA
5 license, which revocation was stayed, and Respondent was placed on probation for a period of
6 three years with certain terms and conditions, including suspension from practice for 120 days.
7 A copy of that decision is attached as **Exhibit A** and is incorporated by reference.

8 **JURISDICTION and STATUTORY PROVISIONS**

9 4. This Accusation and Petition is brought before the Board under the
10 authority of the following laws:^{1/}

11 5. Section 490 states, in pertinent part:

12 A board may suspend or revoke a license on the ground that the licensee
13 has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which the
license was issued. A conviction within the meaning of this section means a plea
or verdict of guilty . . ."

15 6. Section 5100 states, in pertinent part:

16 "After notice and hearing the board may revoke, suspend or refuse to
17 renew any permit or certificate granted under Article 4 (commencing with Section
18 5070) and Article 5 (commencing with Section 5080), or may censure the holder
of that permit or certificate for unprofessional conduct which includes, but is not
limited to, one or any combination of the following causes:

19 "(a) Conviction of any crime substantially related to the qualifications, functions,
20 and duties of a certified public accountant or a public accountant."

21 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
22 board under the authority granted under this chapter.

23 "(h) Suspension or revocation of the right to practice before any governmental
24 body or agency.

25 //

26
27
28 1. All section references are to the California Business and Professions Code, unless
otherwise indicated.

1 7. Section 5050 of the Code states, in pertinent part:

2 "(a) . . . no person shall engage in the practice of public accountancy in this
3 state unless the person is the holder of a valid permit to practice public accountancy issued by
4 the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section
5 5096.).

6 8. Section 5037 of the Code states, in pertinent part:

7 "(b) A licensee shall furnish to his or her client or former client, upon request and
8 reasonable notice:

9 "(1) A copy of the licensee's working papers, to the extent that those
10 working papers include records that would ordinarily constitute part of the client's records and
11 are not otherwise available to the client.

12 "(2) Any accounting or other records belonging to, or obtained from or on
13 behalf of, the client which the licensee removed from the client's premises or received for the
14 client's account. . . "

15 9. Section 5063, subdivision (a), states, in the pertinent part:

16 "A licensee shall report to the board in writing of the occurrence of any of the
17 following events . . . within 30 days of the date the licensee has knowledge of these events:

18 "(1) The conviction of the licensee of any of the following:

19 "(B) Any crime related to the qualifications, functions, or duties of a
20 public accountant or certified public accountant, or to acts or activities in the course and scope of
21 the practice of public accountancy.

22 "(3) The cancellation, revocation, or suspension of the right to practice as a
23 certified public accountant or a public accountant before any governmental body or agency."

24 10. Title 16 California Code of Regulations Section 52(a) provides that a
25 "licensee shall respond to any inquiry by the Board or its appointed representatives within 30
26 days. The response shall include making available all files, working papers and other documents
27 requested."

28 //

1 11. Title 16 California Code of Regulations Section 68 provides that a
2 “licensee, after demand by or on behalf of a client, for books, records, or other data, whether in
3 written or machine sensible form, that are the client’s records shall not retain such records.
4 Unpaid fees do not constitute justification for retention of client records.”

5 12. Code sections 118(b) and 5109 provide that the expiration, cancellation,
6 forfeiture, or suspension of a license does not deprive the Board jurisdiction to commence or
7 proceed with any investigation of, or to proceed with any disciplinary action of, or to render a
8 decision suspending or revoking the license.

9 **COST RECOVERY**

10 13. Section 5107, subdivision (a), states:

11 “The executive officer of the board may request the administrative law judge, as
12 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
13 certificate found to have committed a violation or violations of this chapter to pay to the board
14 all reasonable costs of investigation and prosecution of the case, including, but not limited to,
15 attorneys' fees. The board shall not recover costs incurred at the administrative hearing.”

16 14. Code section 125.3 provides, in pertinent part, that the Board may request
17 the administrative law judge to direct a licensee found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 **ACCUSATION**

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Criminal Conviction)**

23 15. Respondent is subject to disciplinary action pursuant to Code sections 490
24 and 5100, subdivision (a), in that he was convicted of a crime which is substantially related to
25 the qualifications, functions, and duties of a certified public accountant, as follows: On or about
26 February 15, 2007, in the criminal proceeding titled *United States of America v. William E.*
27 *Himmelman* (United States District Court (E.D. Cal) Case No. 2:07-CR-0046 GGH),
28 Respondent was convicted by his guilty plea of violating Title 31, United States Code, section

1 333, a misdemeanor. The incident upon which the conviction is based occurred on or about
2 November 19, 2004.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Suspension or Revocation of the Right to Practice before a Governmental Agency)**

5 16. Respondent is subject to disciplinary action pursuant to Code section
6 5100, subdivision (h), in that he was indefinitely suspended from practicing before the Internal
7 Revenue Services ("I.R.S.") effective March 4, 2008, during an expedited I.R.S. administrative
8 proceeding that was based on Respondent's February 15, 2007 conviction.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Report Reportable Events)**

11 17. Respondent is subject to disciplinary action pursuant to Code section
12 5063, subdivision (a)(1)(B) and (3), in that he failed to report to the Board within 30 days his
13 February 15, 2007 conviction and his March 4, 2008 indefinite suspension by the I.R.S.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Practicing Without a Valid License)**

16 18. Respondent is subject to disciplinary action pursuant to Code section 5050
17 in that on or about June 23, 2008, Respondent issued completed 2007 federal and state tax
18 returns for clients C.L. and L.C., during which time Respondent was serving a 120 day
19 suspension from practice with the Board, and also during which time Respondent had an inactive
20 license based on his failure to comply with the mandatory continuing education requirements for
21 licensure. On or about June 27, 2008, Respondent stated to the Board's Investigative CPA that
22 he was not registered with the California Tax Education Council, was not an attorney, and was
23 not an Enrolled Agent.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Return Client Records)**

26 19. Respondent is further subject to disciplinary action under section 5037, as
27 well as Title 16 California Code of Regulations, section 68, in that he failed to return his client's
28 records, after being requested to do so, as follows: On or about March 2008, client J. S.

1 delivered original client records to Respondent in order to prepare his 2007 tax returns. No
2 returns were completed by Respondent, since an extension of time to file returns was requested.
3 On or about August 4, 2008, client J. S. demanded the return of his client records from
4 Respondent. On or about September 15, 2008, an investigator with the Board confirmed with
5 client J. S. that Respondent had neither returned the records nor had contacted the client.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Failure to Respond to the Board's Inquiries)**

8 20. Respondent is further subject to disciplinary action under Title 16
9 California Code of Regulations, section 52(a) in that he failed to respond to inquiries and
10 demands made by the Board's appointed representative by letter dated August 11, 2008.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Willful Violation of the Accountancy Act and Board Regulations)**

13 21. Respondent is further subject to disciplinary action under section 5100(g)
14 in that he willfully violated the California Accountancy Act and Board Regulations in that he (1)
15 willfully failed to respond to inquiries made by the Board's appointed representative as set forth
16 in paragraph 20, and (2) willfully practiced public accountancy in this state without a valid
17 license to practice, as set forth in paragraph 18.

18 **PETITION TO REVOKE PROBATION**

19 22. Condition 5 of Respondent's Stipulated Settlement and Disciplinary
20 Order, adopted by the Board on March 28, 2008, states:

21 **Comply With Probation.** Respondent shall fully comply with the terms
22 and conditions of the probation imposed by the Board and shall cooperate fully
23 with representatives of the Board of Accountancy in its monitoring and
investigation of the Respondent's compliance with probation terms and
conditions.

24 **FIRST CAUSE TO REVOKE PROBATION**

25 **(Practicing with a Suspended License)**

26 23. Condition 1 of Respondent's Stipulated Settlement and Disciplinary
27 Order, adopted by the Board on March 28, 2008, states:

28 //

1 **Actual Suspension.** Certified Public Accountant Certificate No. 49096
2 issued to William Edward Himmelmann is suspended for 120 days. During the
3 period of suspension the Respondent shall not engage in any activities for which
4 certification as a Certified Public Accountant or Public Accountant is required as
5 described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

6 24. The effective date of Respondent's actual suspension commenced on April
7 28, 2008 and was to end on August 25, 2008. On or about June 23, 2008, Respondent issued
8 completed 2007 federal and state tax returns for clients L.C. and C.L., during the time his license
9 was suspended by the Board. Thus, Respondent engaged in activities for which certification as a
10 Certified Public Accountant or Public Accountant is required, in violation of the Respondent's
11 terms of probation and suspension.

12 **SECOND CAUSE TO REVOKE PROBATION**

13 **(Failure to Obey All Laws)**

14 25. Condition 2 of Respondent's Stipulated Settlement and Disciplinary
15 Order, adopted by the Board on March 28, 2008, states:

16 **Obey All Laws.** Respondent shall obey all federal, California,
17 other states' and local laws, including those rules relating to the
18 practice of public accountancy in California.

19 26. On or about June 23, 2008, Respondent issued completed 2007 federal and
20 state tax returns for clients L.C. and C.L., during the time Respondent's license was suspended
21 by the Board. On or about June 27, 2008, Respondent stated to the Board's Investigative CPA
22 that he was not registered with the California Tax Education Council, was not an attorney, and
23 was not an Enrolled Agent. By filing these income tax returns on behalf of his clients during the
24 time that his CPA certificate was suspended, Respondent violated the requirements of registering
25 as a "tax preparer" as required by law pursuant to Code sections 22250-22259.

26 **THIRD CAUSE TO REVOKE PROBATION**

27 **(Failure to Submit Written Reports)**

28 27. Condition 3 of Respondent's Stipulated Settlement and Disciplinary
Order, adopted by the Board on March 28, 2008, states:

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1 **Submit Written Reports.** Respondent shall submit, within ten (10) days
2 of completion of the quarter, written reports to the Board on a form obtained from
3 the Board. The Respondent shall submit, under penalty of perjury, such other
4 written reports, declarations, and verification of actions as are required. These
5 declarations shall contain statements relative to Respondent's compliance with all
6 the terms and conditions of probation. Respondent shall immediately execute all
7 release of information forms as may be required by the Board or its
8 representatives.

9 28. Respondent has failed to submit any written quarterly reports to the Board,
10 including, but not limited to the quarters ending: June 2008, September 2008, December 2008,
11 and March 2009.

12 **FOURTH CAUSE TO REVOKE PROBATION**

13 **(Failure to take an Ethics Course and Pass an Ethics Examination)**

14 29. Condition 11 of Respondent's Stipulated Settlement and Disciplinary
15 Order, adopted by the Board on March 28, 2008, states:

16 **Ethics Course/Examination.** Respondent shall take and pass with a
17 score of 90 percent or better a Board approved ethics examination prior to the end
18 of the suspension period. Respondent must achieve a successful passing grade,
19 with proof of the passing grade submitted to the Board, prior to resumption of
20 practice.

21 If Respondent fails to pass said examination within the time period
22 provided or within two attempts, Respondent shall so notify the Board and shall
23 cease practice until Respondent takes and successfully passes said exam, has
24 submitted proof of same to the Board, and has been notified by the Board that he
25 may resume practice. Failure to pass the required examination no later than 100
26 days prior to the termination of probation shall constitute a violation of probation.

27 Notwithstanding any other provision of this probation, failure to take and
28 pass this examination within five years of the effective date of this order
constitutes a separate cause for discipline of Respondent's license.

29 30. Respondent has failed to submit any evidence to the Board that he has
30 taken and passed (with a score of 90 percent or better) a Board-approved ethics examination
31 prior to the end of Respondent's suspension period (August 25, 2008).

32 **FIFTH CAUSE TO REVOKE PROBATION**

33 **(Failure to Maintain an Active License Status)**

34 31. Condition 12 of Respondent's Stipulated Settlement and Disciplinary
35 Order, adopted by the Board on March 28, 2008, states:

36 //

1 **Active License Status.** Respondent shall at all times maintain an active
2 license status with the Board, including during any period of suspension. If the
3 license is expired or inactive at the time the Board's decision becomes effective,
4 the license must be renewed within 30 days of the effective date of the decision
5 and brought current and active.

6 32. On or about July 3, 2007, the Board received Respondent's CPA license
7 renewal form. Respondent renewed his CPA license, but wished to remain on inactive status,
8 and indicated that he did not complete a Board-approved eight (8) hour Professional Conduct
9 and Ethics (PC & E) course. In November 2007, Respondent submitted proof of completing 81
10 hours of continuing education ("CE"), in order to bring his CPA license to active status, but
11 failed to include any proof of completion of eight hours of PC & E. As a result, Respondent's
12 license remained on inactive status. Respondent failed to maintain an active license within 30
13 days of the effective date of his probation and suspension with the Board, based on his failure to
14 complete a Board-approved eight hour PC & E course. On or about June 27, 2008, Respondent
15 met with a Board representative and admitted that he had not taken the eight hour Board-
16 approved PC & E course as required for his 2007 renewal and as also required under the terms of
17 probation with the Board. Respondent then promised to take this PC & E course by "this
18 weekend" (June 28, 2008). To date, Respondent has failed to provide proof of completing an
19 eight hour Board-approved PC & E course. As a result, Respondent's license remains on
20 inactive status.

21 **SIXTH CAUSE TO REVOKE PROBATION**

22 **(Failure to Pay Costs)**

23 33. Condition 13 of Respondent's Stipulated Settlement and Disciplinary
24 Order, adopted by the Board on March 28, 2008, states:

25 **Cost Reimbursement.** Respondent shall reimburse the Board \$ 8,165.86
26 for its investigation and prosecution costs. Full payment shall be completed at
27 least six (6) months prior to the end of the probationary period. Respondent may
28 make periodic payments as agreed to by the Board.

29 34. The Board has agreed to allow Respondent to make four quarterly
30 payments per year, due at the end of each quarter. Respondent has failed to submit his quarterly
31 cost payments Board, including, but not limited to, the quarters ending: June 2008,

1 September 2008, December 2008, and March 2009.

2 **SEVENTH CAUSE TO REVOKE PROBATION**

3 **(Failure to Provide Proof that Respondent is mentally and physically fit to practice)**

4 35. Condition 15 of Respondent's Stipulated Settlement and Disciplinary
5 Order, adopted by the Board on March 28, 2008, states:

6 **Medical Treatment.** Respondent shall undergo and continue treatment
7 by a licensed physician or therapist of Respondent's choice and approved by the
8 Board or its designee until the treating physician or therapist certifies in writing in
9 a report to the Board or its designee that treatment is no longer necessary.
10 Respondent shall have the treating physician or therapist submit reports to the
11 Board at intervals determined by the Board or its designee. Respondent is
12 responsible for costs of treatment and reports. Prior to the end of the suspension
13 period, Respondent must provide a letter to the Board from his physician or
14 therapist that addresses his medical and/or mental condition with a statement that
15 Respondent is fit to practice. Respondent shall not engage in practice until proper
16 notification is given to the Board by a duly licensed health care professional that
17 Respondent is mentally and physically fit to practice.

18 36. Prior to the end of the suspension period (August 25, 2008), Respondent
19 failed to submit a letter to the Board from his physician or therapist that addresses his medical
20 and/or mental condition with a statement that Respondent is fit to practice. Nevertheless,
21 Respondent has engaged in the practice of accountancy, even though there has been no proper
22 notification to the Board that Respondent is mentally and physically fit to practice.

23 **EIGHTH CAUSE TO REVOKE PROBATION**

24 **(Failure to Cooperate Fully with the Board during Probation)**

25 37. Condition 5 of Respondent's Stipulated Settlement and Disciplinary
26 Order, adopted by the Board on March 28, 2008, required Respondent to "cooperate fully with
27 representatives of the Board of Accountancy in its monitoring and investigation of the
28 Respondent's compliance with probation terms and conditions."

38. By certified letter dated August 11, 2008 from the Board, Respondent was
requested to provide the following probation-related information within 30 days: (1) the identity
of the physician providing care to Respondent, (2) the approximate date of the first report of this
physician, (3) a certificate of completion for the PC & E course required under the terms of
probation, (4) a list of clients for which Respondent completed 2007 income tax returns during

1 the time of Respondent's suspension from practice, (5) complete copies of all tax returns issued
2 by Respondent during the time of Respondent's suspension from practice, and (6) a copy of
3 Respondent's cover letter to client J.S.

4 39. Respondent failed to provide the information requested in the Board's
5 August 11, 2008 letter, and also failed to contact the Board about this letter. Thus, Respondent
6 has failed to fully cooperate with the Board in its monitoring and investigation of Respondent's
7 compliance with probation terms and conditions.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

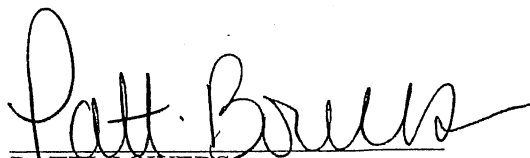
11 1. Revoking the probation that was granted by the Board in Case No. AC-
12 2007-25 and imposing the disciplinary order that was stayed, thereby revoking Certified Public
13 Accountant Certificate No. 49096 issued to William E. Himmelmann; and,

14 2. Revoking, suspending, or otherwise imposing discipline upon Certified
15 Public Accountant Certificate Number 49096 issued to William E. Himmelmann;

16 3. Awarding the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code sections 5107 and 125.3;

18 4. Taking such other and further action as deemed necessary and proper.

19
20 DATED: April 13, 2009



21 PATTI BOWERS
22 Executive Officer
23 California Board of Accountancy
24 Department of Consumer Affairs
25 State of California
26 Complainant
27
28